

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number 042933/373921
(filed with the Notice of Appeal)		
Application Number 09/759,153	Filed January 16, 2001	
First Named Inventor Ghassan Naim		
Art Unit 2840	Examiner Toan D. Nguyen	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s).</p> <p>Note: No more than five (5) pages may be provided.</p>		
Respectfully submitted,  Charles A. Leyes Registration No. 61,317		
Date December 28, 2009		
<p>Customer No. 00826 ALSTON & BIRD LLP Bank of America Plaza 101 South Tryon Street, Suite 4000 Charlotte, NC 28280-4000 Tel Charlotte Office (704) 444-1000 Fax Charlotte Office (704) 444-1111</p> <p>ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON December 28, 2009.</p>		

Attachment
Reasons for Requesting Pre-Appeal Brief Request for Review

Claims 1, 3-4, 7-9, 13-16, 18-30, 33-43, 45-49, 51-55, and 57-65 are pending. The Office rejects all pending claims under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,359,898 to Cudak ("Cudk") in view of U.S. Pat. No. 5,914,950 to Tiedemann, Jr. et al. ("Tiedemann"). In light of the subsequent remarks, Applicants respectfully submit that the rejections should be reversed and the pending claims are in condition for allowance.

The Rejection of Independent Claims 1, 8, 14, 15, 20-22, 33, 38-39, 45-46, 52, and 57 under §103(a) Should Be Reversed

The Office Action submits that independent Claims 1, 14, 15, 20-22, 33, 38-39, 45-46, 52, and 57 ("the independent claims") are obvious in view of Cudak and Tiedemann. A method according to independent Claim 1 comprises monitoring a length of a data queue in a first network element as an indication of future need of communication resources in the first network element. The indication comprises a coded value of the length of the data queue in the first network element. The length of the data queue is embedded in a data block from the first network element. The method further comprises allocating the communications resources for a transmission between the first network element and a second network element based on the indication. The remaining independent claims each have their own scope, but for purposes of this discussion recite similar patentably distinct features such that the independent claims are patentable over the cited references, taken alone or in combination.

The Office Action admits for each respective independent claim that Cudak does not teach or suggest each of the features of the respective independent claim. The Office instead relies on the combination of Cudak and Tiedemann in rejecting the independent claims. Applicants respectfully submit that the combination of Cudak and Tiedemann is not proper and the rejection of the independent claims should be reversed. In this regard, a person having ordinary skill in the art would not be motivated to combine Cudak and

Tiedemann because a combination of Cudak and Tiedemann would not be operable for the intended purpose of Cudak or Tiedemann.

In this regard, Applicants respectfully submit that it would not be obvious to one of ordinary skill in the art to modify Cudak with the features of Tiedemann since the combination will not work. Tiedemann discusses that the queue size of all scheduled tasks is sent to a channel scheduler so that the channel scheduler will perform certain actions based on that information (see column 21, lines 49-67). Applicants submit that when combining Tiedemann and Cudak as suggested by the Office, one would not get the information transmitted in Tiedemann using a countdown value since this would not work in the centralized and distributed configuration of the Tiedemann algorithm. Also, such a combination would not have the technical effect that a transmission (**MS-BSS**) of the queue length would be done for every **TDMA** frame and piggybacked in an RLC/MAC block using the CV header field (see columns 26-28 of Tiedemann). Applicants respectfully submit that a combination cannot be proper where features of a cited art document are frustrated or rendered inoperable. *See, e.g.*, MPEP § 2143.01.

Applicants submitted this argument that Tiedemann and Cudak are not properly combinable in response to the previous Office Action. However, the Examiner ignored the merits of the argument and instead merely posited in the Response to Arguments section that “[t]he motivation to combine Tiedemann et al.’s teaching of queue size in Cudake [sic] et al. would be to transmit an indication of the amount of data by remote station 6.” Regardless of the alleged motivation asserted by the Examiner, the Examiner has not even remotely addressed Applicants’ assertion that Cudak and Tiedemann are not properly combinable. Applicants note that the Examiner is required to answer all material traversed. *See, e.g.*, MPEP § 707.07(f). In view of the Examiner’s failure to answer all material traversed and, in particular, properly and fully address the assertion that Cudak and Tiedemann are not combinable, Applicants respectfully submit that the Office has failed to establish a *prima facie* case of obviousness under § 103(a) and the finality of the Office Action is improper.

Further, even assuming *in arguendo* that Cudak and Tiedemann are properly combinable, the combination does not teach or suggest each of the features of the

independent claims. Independent claim 1 recites, in part, "monitoring a length of a data queue in a first network element as an indication of future need of communication resources in the first network element". The remaining independent claims, which each have their own scope, recite similar features. The Office Action submits that Cudak discloses each of these features. However, Applicants respectfully traverse this assertion and submit that Cudak does not teach each of these features..

Cudak sets forth that "Table I shows results when utilizing a three-bit countdown field. The corresponding results for the final column with a four-bit countdown field are within 1% of those shown" (column 3, lines 52-54). "An iterative routine is entered at step 110, and as shown at step 112, the CV can be computed during the segmentation operation, just as the current method allows. For a single-slot MS, the CV is equivalent to a method counting down the discrete number of remaining blocks, since in that case the number of blocks is the same as the block frame estimate" (column 2, lines 24-29, of Cudak). In other words, an iterative method is used to transfer the remaining blocks. This is not the same as an indication of future need for resources that are going to be used as an indication for allocation of the resources, as claimed.

As discussed in the present specification, a problem that may exist in some networks is that "real time traffic such as video conference has unpredictable fluctuations in the data rate. Thus, any delay in adjusting the resources may mean that a link to a mobile station may not always have data in its transmission queue" (see, for example, page 2, lines 9-11). In some embodiments, a plurality of bits may be used "in each data segment to describe the size of one of the queues in that mobile station. Once this is received in the base station, additional resources can be allocated if necessary" (see, for example, page 3, lines 16-18, of the present application). While Cudak may include a countdown value in a block, this is presumably done to prevent a network from continuing to allocate blocks to a mobile station that has already completed its transmission when several time slots are being utilized to provide a network with advance warning of the impending completion of the packet transmission (see column 1, lines 28-43, and column 2, lines 24-35). Note that resource allocation occurs in step 104 of Fig. 1 of Cudak and no indication of future need for resources is provided anywhere in Cudak

Rather, Cudak merely focuses on "quick" release of transmission resources. Thus, Cudak does not use a length of a data queue as an indication of a future need for resources and is completely silent as to these claimed features.

The Examiner's Response to Arguments posits that Cudak discloses "the network shall monitor subsequent Countdown Values in order to determine the number of blocks remaining in the transmission" and that this disclosure is analogous to using the length of a data queue as an indication of future need of communication resources. However, this disclosure does not teach or suggest the feature of allocating communication resources based on the indication, which is recited by independent Claim 1 and is also recited, albeit in varying wording, by the other independent claims.

Moreover, Tiedemann, whether taken alone or in combination with Cudak, does not cure the deficiencies of Cudak. In fact, Tiedemann is merely cited for the proposition of disclosing "a transmission between a first network element and a second network element based on the indication" in the rejection of Claim 1. Applicants therefore respectfully submit that the independent claims are patentably distinct from the cited references, taken alone or in combination (assuming *in arguendo* that the references are combinable).

For at least the foregoing reasons, Applicants respectfully submit that the rejection of the independent claims should be reversed. Applicants additionally submit that the independent claims are in condition for allowance.

The Rejection of the Dependent Claims is Overcome

Because each of dependent claims includes each of the recitations of a respective independent base claim, Applicants further submit that the dependent claims are distinguishable from the cited references, taken alone or in combination, for at least those reasons discussed above and thus the rejections of the dependent claims should be reversed.